

Hearing Date: October 23, 2019 at 10:00 am (ET)  
Objection Deadline: October 16, 2019 at 4:00 pm (ET)

**PORZIO, BROMBERG & NEWMAN, P.C.**

156 West 56th Street, Suite 803

New York, NY 10019-3800

(212) 265-6888

(212) 957-3983 Facsimile

John S. Mairo, Esq. (jsmairo@pbnlaw.com)

*Attorneys for Optiv Security Inc.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re: : Chapter 11  
: :  
SEARS HOLDINGS CORPORATION, :  
*et al.*<sup>1</sup>, : Case No.: 18-23538 (RDD)  
: Jointly Administered  
Debtor. :  
: :  
-----X

**MOTION OF OPTIV SECURITY INC. FOR ALLOWANCE OF  
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. §  
503(B)(1)**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

TO THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE:

Optiv Security Inc. ("Optiv"), by and through its undersigned counsel, submits this motion (the "Motion") for allowance of its administrative expense claim under 11 U.S.C. §503(b)(1). In support of this Motion, Optiv respectfully states as follows:

**PRELIMINARY STATEMENT**

1. After the commencement of this bankruptcy, Optiv provided certain software security goods and services to Debtors pursuant to the attached three post-petition invoices with a value of up to \$628,982.63 for which Debtors have failed to pay.

2. The goods and services consist of various items, including renewals of annual licenses and software support services.

3. Optiv is aware that Debtors have sold most or all their operations such that they may no longer be using certain of the goods and services provided by Optiv under these bills, but despite inquiries to Debtors, do not have specific information as to any cessation of use of such goods and services by Debtors.

4. Thus, Optiv makes this post-petition administrative priority claim for the full value of the goods and services provided under these post-petition bills, although it recognizes that the claim may be limited to the extent Debtors ceased using such goods and services.

**JURISDICTION AND VENUE**

5. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

**BACKGROUND**

6. On October 15, 2018 (the "Petition Date"), Sears Holdings Corporation and several of its affiliates, including Sears, Roebuck and Co., filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York.

7. After the Petition Date, Optiv performed work on behalf of one or more of the Debtors pursuant to the attached post-petition invoices (the "Post-Petition Invoices"), providing goods and services.

8. In accordance with terms, Optiv submitted the Post-Petition Invoices to one or more of the Debtors for such post-petition goods and services.

9. Debtors have not paid the Post-Petition Invoices that are due and owing to Optiv in the total amount of \$628,982.63.

10. The Debtors have not disputed that the amounts under the Post-Petition Invoices are due and owing.

**RELIEF REQUESTED**

11. Optiv requests entry of an order substantially in the form attached hereto: (i) granting Optiv an allowed administrative expense claim in the amount of \$628,982.63 under section 503(b)(1) of the Bankruptcy Code for goods provided, and services rendered, to the Debtors post-petition; and (ii) granting Optiv such other and further relief as deemed just and necessary.

**BASIS FOR RELIEF**

12. 11 U.S.C. § 503(b) states, in pertinent part:  
(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—  
  
(1) (A) the actual, necessary costs and expenses of preserving the estate.

13. Under Section 503(b)(1)(A) of the Bankruptcy Code, "[a]n expense is administrative only if it arises out of a transaction between the creditor and the bankruptcy trustee or debtor in possession, and only to the extent that the consideration supporting the claimant's right to payment was both supplied to and beneficial to the debtor-in-possession in the operation of the business." *See In re Bethlehem Steel Corp.*, 479 F.3d 167, 172 (2d Cir. 2017) (citing *Trustees of Amalgamated Ins. Fund v. McFarlin's*, 789 F.2d 98, 101 (2d Cir. 1986)).

14. Debtors are required to pay the "reasonable value of the services received," and "there is a presumption that the contract rate is reasonable." *In re Smurfit-Stone Container Corp.*, 425 B.R. 735, 741 (Bankr. D. Del. 2010).

15. As described in the Post-Petition Invoices, Optiv provided the Debtors goods and services in the amount of \$628,982.63 after the Petition Date, and Debtors have failed to pay the Post-Petition Invoices.

16. Debtors cannot legitimately dispute that the Debtors benefited from the goods provided and the services rendered by Optiv pursuant to the Post-Petition Invoices.

17. Optiv's administrative expense claim under the Post-Petition Invoices arises from the Debtors' post-petition obligations, and Optiv's claim under the Post-Petition Invoices derives from the actual and necessary costs and expenses incurred after the Petition Date in

connection with operating the Debtors' business. Accordingly, Optiv is entitled to an administrative priority expense claim pursuant to 11 U.S.C. § 503(b)(1) in the amount of \$628,982.63 for the goods and services provided by Optiv to Debtors post-petition.

18. The goods and services consist of various items such as renewals of annual licenses and support services.

19. Optiv is aware that Debtors have sold most or all their operations such that they may no longer be using certain of the goods and services provided by Optiv under the Post-Petition Invoices, but despite inquiries to Debtors, does not have specific information as to any cessation of the use of such goods and services.

20. Thus, Optiv makes this post-petition administrative priority claim for the full value of the goods and services provided, but recognizes that the claim may be limited to the extent Debtors ceased using such goods and services.

### **NOTICE**

21. Notice of this Motion will be served on the Debtors and the "Master Service List" as those terms are defined in the Amended Order Implementing Certain Notice and Case Management Procedures [Dkt. No. 405], and in the manner provided therein. Optiv submits that no other or further notice need be provided.

### **CONCLUSION**

22. For the foregoing reasons, Optiv Security Inc. respectfully requests that this Court enter an Order: (a) granting Optiv an allowed administrative expense claim in the amount of \$628,982.63 under section 503(b)(1) of the Bankruptcy Code for goods provided and services rendered to the Debtors post-petition; and (b) granting such other and further relief as this Court deems equitable and proper.

23. No previous application for the relief sought herein has been made to this or any other Court.

24. Optiv reserves the right to supplement or amend this Motion and make additional arguments at the hearing to consider the Motion, and reserves any rights of setoff and/or recoupment it may have in connection with the claims asserted in this Motion.

Dated: New York, New York  
September 27, 2019

**PORZIO, BROMBERG & NEWMAN, P.C.**

By: /s/ John S. Mairo  
John S. Mairo  
156 West 56th Street  
Suite 803  
New York, New York 10019  
(212) 265-6888  
(212) 957-3983 Facsimile  
jsmairo@pbnlaw.com

-and-

**SHOOK, HARDY & BACON L.L.P.**

Mark Moedritzer  
2555 Grand Boulevard  
Kansas City, Missouri 64108  
(816) 474-6550  
(816) 421-5547 Facsimile  
mmoedritzer@shb.com

*Attorneys for Optiv Security Inc.*

## **POST-PETITION INVOICES**



Please make electronic payment to:  
Beneficiary: Optiv Security Inc.  
Bank: JPMorgan Chase



1144 15th Street, Ste 2900  
Denver CO 80202

Ph: 303.298.0600  
Fx: 303.298.0868  
TIN# 43-1806449  
DUNS# 01-946-6684

Please send check payment to:  
Optiv Security Inc.  
P.O. Box 28216 Network Place  
Chicago, IL 60673-1282

Overnight address:  
J.P. Morgan  
Optiv Security Inc.  
131 S Dearborn, 6th Floor  
Chicago, IL 60603

LOCKBOX 28216

## Invoice

Date 12/14/2018  
Invoice # INV-100105301  
Terms Net 60  
Due Date 02/12/2019  
PO # PO923171  
Sales Rep Roman Eng  
Currency US Dollar  
Shipping Method FOB

### Attention: Accounts Payable

Bill To	Ship To
Sears Holding Corporation 3333 Beverly Rd Hoffman Estates IL 60179-0001	Sears Holding Corporation 3333 Beverly Rd HOFFMAN ESTATES IL 60179

\*\*\*\*\*PLEASE SEND REMITTANCE DETAILS TO AR@OPTIV.COM\*\*\*\*\*

Item	Description	Qty	Unit Price	Amount	Tax Rate	Start Date	End Date
Cx-Volume-Users-Subscription	Volume Subscription; Includes The Following: Cx-SDLC-Projects-Subscription, Cx-Auditor-Subscription, Cx-ConcurrentScans-Subscription, Cx-Server-Subscription	100	878.14	87,814.00	7.5%	12/08/2018	12/07/2019
Cx-SDLC-Projects-Subscription	Cx-SDLC-Projects-Subscription	1,500	0.00	0.00	0.0%	12/08/2018	12/07/2019
Cx-Server-Subscription	Checkmark: CxSAST Solution with 1 Cx Manager Server for 50 Project Codebases. Includes all languages (except Apex), no limit on # of LOC scanned, no limit on # of scans of specified project codebases.	1	0.00	0.00	0.0%	12/08/2018	12/07/2019
Cx-Auditor-Subscription	Checkmark: A user authorized to adjust and customize queries.	1	0.00	0.00	0.0%	12/08/2018	12/07/2019
Cx-ConcurrentScans-Subscription	Cx-ConcurrentScans: The number of static code analysis scans that may be executed in parallel.	3	0.00	0.00	0.0%	12/08/2018	12/07/2019
Cx-Integration-Subscription	Checkmark: An Integration license for all out-of-box available integrations.	1	6,272.44	6,272.44	7.5%	12/08/2018	12/07/2019

Tracking #s:

- Thank you for your business. If you have any questions regarding this invoice, please contact Optiv Accounts Receivable at ar@optiv.com, 303-298-0600.  
- Optiv invoices for product sales upon receipt of an approved purchase order or signed agreement. All invoices are due on or before the due date listed on this invoice. Any invoice not paid on or before the due date will be subject to a 1.5% late charge per month.  
- All sales are final. Manufacturer's warranty applies. Optiv shall have no liability or responsibility for any loss or damage connected with the sale or use of the product.  
- The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

Subtotal 94,086.44  
Tax Total 7,056.49  
Total 101,142.93  
Amount Due \$101,142.93





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Bank: JPMorgan Chase



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Fx: 303.298.0868  
TIN# 43-1806449  
DUNS# 01-946-6684

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Optiv Security Inc.  
P.O. Box 28216 Network Place  
Chicago, IL 60673-1282

Overnight address:  
J.P Morgan  
Optiv Security Inc.  
131 S Dearborn, 6th Floor  
Chicago, IL 60603

LOCKBOX 28216

## Invoice

Date 12/31/2018  
Invoice # INV-100107568  
Terms Net 60  
Due Date 03/01/2019  
PO # PO928179  
Sales Rep Roman Eng  
Currency US Dollar  
Shipping Method FOB

### Attention: Accounts Payable

Bill To	Ship To
Sears Holding Corporation 3333 Beverly Rd Hoffman Estates IL 60179-0001	Sears Holding Corporation 3333 Beverly Rd HOFFMAN ESTATES IL 60179

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Item	Description	Qty	Unit Price	Amount	Tax Rate	Serial Num/Genl	Start Date	End Date
TPRN0030	Trend Micro : TippingPoint S7500NX Premium Support + DV + ThreatDV 1Yr Renew	4	63,597.00	254,388.00	7.5%	7500NX-50R4-436T, 7500NX-50R4-4370, 7500NX-50R4-436X, 7500NX-50R4-436W,	09/01/2018	09/30/2019
TPRN0030	Trend Micro : TippingPoint S7500NX Premium Support + DV + ThreatDV 1Yr Renew	1	78,561.00	78,561.00	7.5%	7500NX-50R4-B4C3,	01/14/2018	09/30/2019
TPRN0030	Trend Micro : TippingPoint S7500NX Premium Support + DV + ThreatDV 1Yr Renew	1	78,561.00	78,561.00	7.5%	7500NX-50R4-044S,	01/16/2018	09/30/2019
TPRN0177	TippingPoint SMS H3 XL HW + Support 1Yr Normal 1+ Other Price Type Renew	2	7,602.25	15,204.50	0.0%	SVR-04-50R2-4007, SVR-04-50R2-4005,	09/21/2018	09/30/2019

Tracking #'s:

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Subtotal 426,714.50  
Tax Total 30,863.26  
Total 457,577.76  
Amount Due \$457,577.76



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Beneficiary: Optiv Security Inc.  
Bank: JPMorgan Chase

1144 15th Street, Ste 2900  
Denver CO 80202

Ph: 303.298.0600  
Fx: 303.298.0868  
TIN# 43-1806449  
DUNS# 01-946-6684

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Optiv Security Inc.  
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Chicago, IL 60673-1282

Overnight address:  
J.P Morgan  
Optiv Security Inc.  
131 S Dearborn, 6th Floor  
Chicago, IL 60603

LOCKBOX 28216

## Invoice

Date 02/28/2019  
Invoice # INV-100111242  
Terms Net 60  
Due Date 04/29/2019  
PO # KMKIT-6000047428  
Sales Rep Roman Eng  
Currency US Dollar  
Shipping Method FOB

Attention: Jose Herrera

Bill To	Ship To
Sears Holding Corporation 3333 Beverly Rd Hoffman Estates IL 60179-0001	Sears Holding Corporation 3333 Beverly Rd HOFFMAN ESTATES IL 60179

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Item	Description	Qty	Unit Price	Amount	Tax Rate	Serial Number(s)	Start Date	End Date
ESNSUCCESS-ATA	STANDARD MFE ESSENTIAL SUCCESS SVCS PLAN PREPAID 1+	1	55,000.00	55,000.00	6.25%		01/26/2019	01/25/2020
NAPYCM-AB-EA	McAfee VirusScan Enterprise for Storage - 1Yr	34	327.32	11,128.88	6.25%	Grant#, 11647396-NAI	01/26/2019	01/25/2020

Tracking #'s:

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Subtotal	66,128.88
Tax Total	4,133.06
Total	70,261.94
Amount Due	\$70,261.94